IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§	Chapter 11
	§	
P10 INDUSTRIES, INC.,	§	Case No.
	§	
Debtor.	§	
	§	

STATEMENT OF BACKGROUND INFORMATION AND DECLARATION OF JAMES A. POWERS, CHIEF FINANCIAL OFFICER AND VICE PRESIDENT OF FINANCE OF P10 INDUSTRIES, INC., IN SUPPORT OF DEBTOR'S CHAPTER 11 PETITION AND FIRST-DAY MOTIONS

Pursuant to 28 U.S.C. § 1746, I, James A. Powers, hereby submit this declaration (the "Declaration") under penalty of perjury:

1. I am the Chief Financial Officer and Vice President of Finance of P10 Industries, Inc. ("Debtor" or "P10"), a corporation organized under the laws of the state of Delaware and a debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Chapter 11 Case"). In such capacity, I am familiar with the Debtor's day-to-day operations and financial affairs.

Introduction

2. In order to obtain necessary and critical financing, (i) to avoid possible dissolution based on mounting administrative costs and certain liabilities; (ii) to effectuate its business plan of monetizing non-core intellectual property and making acquisitions of profitable businesses to create long-term stockholder value, and (iii) to restructure its financial affairs, on March 22, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") commencing the above captioned case (the "Chapter 11 Case"). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. To minimize the adverse effects on its business, the Debtor has filed motions and pleadings seeking various types of "first day" relief (collectively, the "First Day Motions"). The First Day Motions seek relief to allow the Debtor to meet necessary obligations and fulfill its duties as a debtor-in-possession. I am familiar with the contents of each First Day Motion and believe that the relief sought in each First Day Motion is necessary to enable the Debtor to operate in chapter 11 with minimal disruption or loss of productivity and value, constitutes a critical element in achieving a successful reorganization of the Debtor's business, and best serves the Debtor's estate and creditors' interests.

4. I am generally familiar with the Debtor's day-to-day operations, business, financial affairs, and books and records and have served as the Debtor's Chief Financial Officer since December 2013. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the Debtor's operations and finances, information learned from my review of relevant documents, information supplied to me by other members of the Debtor's management and its advisors, or my opinion based on my experience, knowledge, and information concerning the Debtor's operations and financial condition. I am authorized to submit this Declaration on behalf of the Debtor, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

5. This Declaration has been organized into four sections. The first provides background information on the Debtor's business. The second describes the Debtor's capital structure. The third describes the events leading up to the bankruptcy filing. The fourth section summarizes the relief requested in, and the legal and factual basis supporting, the First Day Motions.

I. The Debtor's Business and Operations

6. On September 29, 2016, the Debtor entered into an Asset Purchase Agreement with Langley Holdings plc, a United Kingdom public limited company, and Piller USA, Inc. (now Piller Power Systems, Inc.) ("Piller"), a Delaware corporation and a wholly owned subsidiary of Langley. Langley and its subsidiaries, including Piller are collectively referred to herein as "Langley." The agreement provided, among other things, that Langley would purchase substantially all of the Debtor's assets and operations for a nominal purchase price plus the assumption of all indebtedness, including bank debt, liabilities and customer, employee and purchase commitments going forward.

7. On November 19, 2016, the sale of substantially all of the Debtor's assets and operations to Langley closed. Pursuant to the terms of the purchase agreement, after the closing of the disposition of our assets, the Debtor retained approximately $1.6 million in cash ("Cash"), which equaled the amount by which the value of the acquired assets exceeded the assumed liabilities on the Debtor's balance sheet by more than $5 million at closing. The Debtor also retained certain intellectual property rights related to certain of patents. Following the sale of assets to Langley, the Debtor changed its name from Active Power, Inc. to P10 Industries, Inc.

8. On December 1, 2016, the Debtor filed with the SEC a Notification of Removal from Listing and/or Registration under Section 12(b) of the Exchange Act on Form 25 to delist the shares of our common stock from NASDAQ and the deregistration of common stock under Section 12(b) of the Exchange Act. On that day, trading of the Debtor's common stock was suspended on NASDAQ and, since that date, the Debtor's common stock has been traded solely on the OTC Pink Market operated by OTC Markets Group. On January 5, 2017, a Certification and Notice of Termination of Registration under Section 12(g) of the Exchange Act was filed on Form 15. On

March 15, 2017, the Debtor filed with the SEC a Certification and Notice of Suspension of Duty to File Reports under Sections 13 and 15(d) of the Exchange Act on Form 15, which suspended the filing of current and periodic reports with the SEC under the Exchange Act. The Debtor's common stock will continue to be traded on the OTC Pink Market under the symbol PIOI.

9. The Debtor has spent decades building up its intellectual property portfolio, spending tens of millions of dollars on research and development targeting a variety of leading edge technologies with applications beyond traditional uninterrupted power supply (UPS) and flywheel technology. With the asset sale, a majority of patents directly related to the flywheel business were transferred to Langley. Importantly, P10 was able to retain 18 US patents and 3 foreign patents ("Patents"), which the Debtor believes have the potential to create material value for P10 shareholders.

10. In the fall of 2016, a study was conducted on the Patents by patent expert Jack Lu, PhD, CFA, the Founding Partner and Chief Economist of Intellectual Property Market Advisory Partners LLC. Dr. Lu concluded, through extensive analysis, that the most likely valuation of the Patents (not including the foreign patents), was in excess of $3.5 million. As is typical in patent analysis, there were plenty of caveats, which could make the patent valuation either materially higher, or lower. Importantly, however, Dr. Lu concluded that the Patents covered technology that can be adopted in a wide range of fields of use, including industrial and commercial building, process control and automation, and certain areas of manufacturing.

11. Since the study conducted by Dr. Lu, P10 has engaged Novelty Capital LLC ("Novelty") to assist P10 in pursuing a targeted plan to monetize the intellectual property covered by the Patents. P10 and Novelty have agreed upon a multi-phase plan that involves: 1) reviewing technology related to P10 patents to determine evidence of use; 2) preparing detailed claim charts,

conducting validity and financial analysis to determine fair market values for the patents; 3) preparing a monetization plan for the patents, including potential sale or licensing; 4) searching for, identifying and sourcing potential patent sale and licensing opportunities; and 5) structuring each individual patent transaction.

12. P10 and Novelty expect this process to take time. Initial progress has been encouraging, with early phases of the plan already complete. Going forward, P10 intends to vigorously continue pursuing the business plan of maximizing the value of its intellectual property. P10 believes the ultimate value for P10 shareholders could be material. Moreover, given the nature of the intangible assets involved, P10 and Novelty intend to be thoughtful in their approach. The optimal path for monetization may differ for each patent: for some, a sale may be optimal; for others, licensing may generate the highest net present value; and for others, a contribution to a joint venture with other "related patent" holders may make the most economic sense for P10 stakeholders. P10 intends to fully explore every option in pursuit of a detailed and nuanced plan that seeks to maximize value for P10 stakeholders.

13. In connection with monetizing the Patents, P10 is also pursuing a strategy of making acquisitions of profitable businesses.

14. P10 also has U.S. federal tax loss carryforwards ("NOLs") of approximately $274.6 million and research and development credit carry-forwards of approximately $4.1 million, each as of December 31, 2016 (the "Development Credits" and together with the NOLs, the "Tax Attributes"). The Tax Attributes can be used to reduce P10's future income tax expense for as long as they remain available.

II. Current Assets and Capital Structure

15. As discussed, P10's primary assets consist of the Cash, the Patents, and the Tax Attributes.

16. Pursuant to the Asset Purchase Agreement, Langley assumed all of the Debtor's Liabilities, as defined below, arising out of, relating to or otherwise in respect of the purchased assets to the extent Liabilities relate to such assets on or prior to the closing date but excluding each of the following: (1) Liabilities relating to the headquarters facility lease ("Braker Facility Lease"); (2) Liabilities relating to the Assignment and Assumption of Lease Agreement, dated November 19, 2016, relating to P10's former facility at 11525 Stonehollow Drive, Austin, Texas ("Stonehollow Lease Assignment"); and (3) Liabilities related to taxes, indemnification of officers and directors, retained assets, retained employees or obligations to Langley under the Asset Purchase Agreement. "Liabilities" shall mean any liability, indebtedness or obligation of any kind (whether known, unknown, accrued, absolute, contingent, matured, unmatured or otherwise, and whether or not required to be recorded or reflected on a balance sheet under generally accepted accounting principles in the U.S.). Langley originally agreed to partially assume the lease obligations for the Braker Facility Lease pursuant to a sublease, but the Debtor's landlord refused to approve a sublease of the Braker Facility Lease to Langley, and the sublease was not executed. However, Langley agreed to close on the sale without the sublease of that facility. As a result, the Debtor remains obligated to make payments under the Braker Facility Lease.

17. The Debtor also has unsecured debt obligations that it pays in the ordinary course. Most of the prepetition amounts related to these obligations were paid before filing. However, the Debtor has ongoing obligations related to payroll, benefits, ordinary course professionals, and various vendors.

III. Events Leading up to Bankruptcy

18. Subsequent to the sale of substantially all of the Debtor's assets, the Debtor has focused its efforts on: (i) preserving cash by reducing overhead expenses; (ii) negotiating with the landlord and Langley to terminate its obligations under the Braker Facility Lease; and (iii) actively seeking financing necessary to move forward with its strategy to monetize the Patents and make acquisitions designed to generate profit and positive cash flows, thus creating long-term enterprise value ("Strategy").

19. Before the Petition Date, in a vigorous effort to obtain the required financing, the Debtor participated in serious discussions with several potential investors. However, obtaining the necessary financing was difficult due, in large part, to the Debtor's Liabilities, including the Liabilities related to the Braker Facility Lease, which could total over $5 million. In the interim, the Debtor continues to incur liabilities and expenses such as payroll for the two executive employees, directors' and officers' insurance, taxes, legal, accounting and consulting fees and miscellaneous administrative expenses. In the absence of a restructuring or other satisfactory resolution of the Debtor's outstanding liabilities and obligations, the Debtor's liabilities and expenses will continue to increase and thereby decrease the likelihood that the Debtor will obtain future financing or capital investment and similarly reduce the amount of assets available for ultimate distribution to stakeholders. In the absence of further investment or other financing and the elimination of the Braker Facility Lease obligations, the Debtor would likely proceed with a dissolution and distribute remaining assets, if any, in accordance with applicable law.

20. Fortunately, P10 entered into a Restructuring Support Agreement ("210 RSA") with Dallas based 210/P10 Investment, LLC ("210"). A true and correct copy of the 210 RSA is attached hereto as **Exhibit A** and incorporated herein by reference. Pursuant to the 210 RSA, 210

will invest $4.654 million in exchange for 21,650,000 shares of P10's common stock. In addition, 210 will provide a ten million dollar line of credit to be used for acquisitions in furtherance of the Debtor's Strategy. Pursuant to the 210 RSA, P10 was required to file bankruptcy and confirm a plan of reorganization effectuating the terms of the 210 RSA.

21. P10 also entered into that certain Restructuring Support Agreement with Langley. ("Langley RSA"). A true and correct copy of the Langley RSA is attached hereto as **Exhibit B** and incorporated herein by reference. Pursuant to the Langley RSA, P10 will be able to shed all of its contingent liabilities related to the Braker Facility Lease and the sale of its assets to Langley.

22. P10 has filed, with its Petition and Schedules, a Prepackaged Plan and Disclosure Statement, which, after Court approval, shall order the implementation of the terms of the 210 RSA and the Langley RSA allowing P10 to maximize its Strategy for the long-term benefit of its shareholders.

IV. First Day Pleadings

23. Contemporaneously with the filing of this Declaration, the Debtor has filed a number of First Day Motions to minimize the adverse effects of the commencement of this Chapter 11 Case on its business, and to ensure that its restructuring goals can be implemented with limited disruptions. I have reviewed each of the First Day Motions and I believe that the relief sought therein is necessary to permit an effective transition into chapter 11. I believe that the Debtor's estate will suffer immediate and irreparable harm if the Debtor does not obtain the relief requested through the First Day Motions. A description of the First Day Motions, the relief sought therein, and the facts in support of the same is detailed below.

A. Combined Hearing and Notice Motion

24. As part of the Debtor's First Day Motions, the Debtor filed the *Debtor's Emergency Motion for an Order (I) Combining the Hearing on the Joint Prepackaged Plan of the Debtor and the Disclosure Statement, (II) Approving Notices Related Thereto, and (III) Granting Related Relief* (the "Combined Hearing and Notice Motion"). The Combined Hearing and Notice Motion requests that the Court (a) set a combined hearing to consider approval of the adequacy of the Disclosure Statement and confirmation of the Prepackaged Plan (the "Combined Hearing"); (b) approve (i) the time fixed for filing objections to the adequacy of the Disclosure Statement and/or to confirmation of the Prepackaged Plan and (ii) the time, date, and place of the Combined Hearing; (c) approve the Combined Hearing Notice, substantially in the form attached to the Combined Hearing and Notice Motion as **Exhibit A**, Notice of Unimpaired Non-Voting Status substantially in the form attached to the Combined Hearing and Notice Motion as **Exhibit B**, and Publication Notice substantially in the form attached to the Combined Hearing and Notice Motion as **Exhibit C**; (d) waive Bankruptcy Rules 3020(e), requiring a 341 meeting, and 1007(a)(3), requiring a list of equity security holders.

25. I believe the proposed notice is the most efficient method to provide notice to shareholders of the Combined Hearing and deadlines in this case.

B. Trading Motion

26. As part of the Debtor's First Day Motions, the Debtor filed the *Debtor's Emergency Motion For Entry of Interim and Final Orders Establishing Notification and Hearing Procedures for Transfers of, or Claims of Worthlessness With Respect to, Certain Equity Securities and for Related Relief* (the "Trading Motion").

27. Through the Trading Motion, the Debtor requests that this Court enter interim and final orders (a) establishing notification and hearing procedures regarding the trading of the

Debtor's Common Stock or Equity Securities (as defined in the Trading Motion) or of any beneficial interest therein by persons or entities holding 4.5% or more of the Debtor's Common Stock that must be complied with before trades become effective, (b) ordering that any purchase, sale, or other transfer of Equity Securities in violation of the procedures set forth in the Trading Motion shall be void *ab initio*, and (c) scheduling a final hearing (the "Final Hearing") on the Trading Motion.

28. As previously mentioned, the Debtor has valuable Tax Attributes that could translate into a significant potential future tax savings. A failure to preserve the Debtor's Tax Attributes could cause the Debtor's estate to suffer a significant tax liability to the detriment of stakeholder interests.

29. Given the significant benefit to the estate of preserving the Tax Attributes, I believe that cause exists to grant the relief requested immediately, ***on an interim basis pending this Court's entry of a Final Order***, and that such relief is in the best interests of the estate.

30. It is my understanding that under applicable tax laws, if transfers of the Debtor's Common Stock above the thresholds more fully described in the Trading Motion were to occur prior to the effective date of the Debtor's Chapter 11 plan, those transfers may trigger an "ownership change" under applicable law and thereby severely endanger the Debtor's ability to utilize its Tax Attributes and thus causing considerable damage to estate interests.

31. Granting the relief requested in the Trading Motion will preserve value for the Debtor's estate.

32. It is my understanding that the procedures requested by the Debtor in the Trading Motion would permit most stock and all claims trading to continue, subject to applicable law.

Based on current SEC filings, there are only three holders of Equity Securities who currently hold more than 5% of the Debtor's outstanding Common Stock.

C. Bar Date Motion

33. As part of the Debtor's First Day Motions, the Debtor filed the *Debtor's Emergency Motion For an Order (I) Authorizing the Mailing of Notices, (II) Establishing a Bar Date for Filing Proofs of Claim, (III) Establishing Ramifications for Failure to Timely File Claims, (IV) Approving Consolidated Notice of (A) Case Commencement and (B) Bar Date, and (V) Approving Notice Procedures (*the "Bar Date Motion").

34. With the Bar Date Motion, the Debtor seeks the entry of an order under Bankruptcy Code § 105(a): (i) authorizing the mailing of notices; (ii) establishing a bar date to file proofs of claims; (iii) establishing ramifications for the failure to comply with the bar date; (iv) approving a consolidated notice of (a) case commencement and (b) the bar date; and (v) approving notice procedures for this Chapter 11 Case.

35. The Debtor believes that the Bar Date Motion properly balances due process concerns with finality. The Debtor submits that, absent the relief granted in the Bar Date Motion, the Debtor and its estate could suffer irreparable harm.

36. The 210 RSA requires certain deadlines and if they are not met, there is a risk that the Debtor will not obtain the benefits of the 210 RSA, i.e., the financing required to implement its Strategy to increase shareholder value. Considering the procedures the Debtor will be complying with to provide notice, the Debtor and its estate must be afforded the assurance of finality with respect to the claims against its estate.

D. RSA Assumption Motion

37. As part of the Debtor's First Day Motions, the Debtor filed the *Debtor's Emergency Motion for an Order Authorizing the Assumption of Debtor's Restructuring Support Agreements with 210/P10 Investment LLC and Langley Holding, PLC (*the "RSA Assumption Motion").

38. Prior to the Petition Date, the Debtor executed (i) a restructuring support agreement (the "210 RSA") with 210/P10 Investment LLC ("210") and (ii) a restructuring support agreement (the "Langley RSA", and together with the 210 RSA, the "RSAs") with Langley Holdings, plc ("Langley"). The 210 RSA is attached to the RSA Assumption Motion as **Exhibit A** and the Langley RSA is attached as **Exhibit B**. The Debtor is seeking to implement a restructuring of its business, obtain new capital, gain access to financing, facilitate the transfer of the lease on the Debtor's former office building, and relieve itself of certain other lease and contractual obligations.

39. Through the Langley RSA the Debtor has agreed to pay Langley $1 million in exchange for a release of the claims identified in the Langley RSA.

40. Through the 210 RSA, subject to the terms and conditions of a securities purchase agreement, 210 will invest $4.65 million in new money in the Debtor through a securities purchase agreement. 210 has also agreed to provide additional financing to the Debtor in the form debt or preferred equity in an amount up to $10 million to fund future acquisition opportunities. The proposed equity investment and additional financing provide significant value to the Debtor and the Debtor's estate. In recognition that 210 has committed capital and incurred expenses, and will continue to incur expenses, associated with pursuing the proposed transactions in the 210 RSA, the Debtor has agreed to modest breakup protections in the amount of $500,000. The breakup fee will only be payable in the event another interested investor makes a higher and better offer. The amount of the proposed breakup fee is consistent with 210's estimated out-of-pocket expenses to be incurred in connection with the bankruptcy filing and the consummation of the transactions

contemplated in the RSAs. One of the conditions to the enforceability of the 210 RSA is that the Debtor file a motion to assume the 210 RSA and obtain approval from the Bankruptcy Court on or before April 7, 2017. If the 210 RSA is not authorized by the Bankruptcy Court on or before April 7, 2017, 210 will not be obligated to consummate the transactions contemplated in the 210 RSA.

41. I believe that the Debtor's decision to assume the RSAs is a sound exercise of its business judgment. Through the 210 RSA, the Debtor will obtain much needed equity capital and access to a future financing source that will allow the Debtor to continue executing on its current patent monetization strategy and to continue to pursue other opportunities to the benefit of the Debtor, its creditors, and shareholders. The new capital and access to financing under the 210 RSA will benefit the Debtor and its entire estate.

42. The amount of the proposed breakup fee, as incorporated in the 210 RSA, is appropriate under the circumstances. 210 has committed significant capital and incurred expenses associated with pursuing the proposed transactions. Moreover, the breakup fee is consistent with 210's estimated out-of-pocket expenses to be incurred in connection with the bankruptcy filing and the consummation of the transactions contemplated in the RSAs. Given the relatively modest amount of the breakup fee and the significant value 210 has agreed to provide to the Debtor, I believe that that the breakup fee is appropriate in all respects.

43. Furthermore, absent an assumption of the 210 RSA, 210 will not be obligated to provide the requested financing and the benefits that the Debtor and its estate will obtain through the Debtor's proposed re-structuring. One of the conditions to the enforceability of the 210 RSA is that the Debtor file a motion to assume the 210 RSA and obtain approval from the Bankruptcy Court on or before April 7, 2017. If the 210 RSA is not authorized by the Bankruptcy Court on or

before April 7, 2017, 210 will not be obligated to consummate the transactions contemplated in the 210 RSA.

44. Through the Langley RSA the Debtor is eliminating significant liability against the Debtor and the estate. The Debtor no longer has any need for the Braker Lease. However, the remaining term on the Braker Lease is 5 years. By assigning the Braker Lease, the Debtor will eliminate a significant contingent liability of over 5 million dollars. In addition to obtaining relief with respect to the Braker Lease, the Debtor will be receiving relief relating to other contingent lease obligations as well as potential liability relating to an asset purchase agreement it entered into in November 2016. Moreover, the elimination of liabilities to be achieved pursuant to the Langley RSA was a condition to 210's willingness to provide investment capital and other financing to the Debtor. I believe that the Debtor's proposed restructuring is unlikely to occur without the assumption of the Langley RSA.

E. Wage Motion

45. As part of the Debtor's First Day Motions, the Debtor filed the *Debtor's Emergency Motion for Order Debtor to Pay Certain Prepetition Wages, Other Compensation and Reimbursable Employee Expenses* (the "Wage Motion").

46. With the Wage Motion, the Debtor seeks authority to pay certain prepetition obligations owed to either its employees or those who provide employee benefits, to honor and continue certain employee benefits (collectively, and as described herein, the "Employee Obligations") and to authorize and direct financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to prepetition Employee Obligations. As more fully described in the Wage Motion, Employee Obligations include amounts

owed to or on behalf of the employees for wages, salaries, reimbursement of expenses, and other benefits.

47. As of the Petition Date, the Debtor employs 2 salaried employees (the "Employees"). The Employees are responsible for the ongoing business operations of the Debtor. The Employees' skills, knowledge and understanding with respect to the Debtor's operations are essential to the effective reorganization of the Debtor's financial affairs.

48. The Debtor is engaged in a highly competitive business and depends on its ability to retain its existing dedicated employees. Absent the relief requested in the Wage Motion, existing employees and their families will suffer undue hardship because the payments the Debtor seeks to pay are needed to enable the employees and their families to meet their financial obligations. The Debtor's ability to preserve its business and assets and ultimately reorganize will be adversely affected if it is unable to retain its dedicated and loyal employees. Accordingly, it is critical that any hardship and disruption caused by this Chapter 11 Case be minimized in order to preserve morale and maintain the Debtor's two employees.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing *Declaration of James A. Powers* is true and correct.

Dated: March 22, 2017

By:____________________________
Name: James A. Powers
Title: Chief Financial Officer
P10 Industries, Inc.